

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SEP 27 2021

JULIA C. DUDLEY, CLERK
BY: *ASegle*
DEPUTY CLERK

DONNIE T.A.M. KERN

Plaintiff,

V.

**GEORGE M. GARTEN
IN OFFICIAL CAPACITY OF
CHAIRMAN & MEMBER
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**STEPHEN A. BENNETT
IN OFFICIAL CAPACITY OF
MEMBER
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**CLETUS W. NICELY
IN OFFICIAL CAPACITY OF
MEMBER
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**M. JOAN VANNORSALL
IN OFFICIAL CAPACITY OF
MEMBER
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

NO. 7. 21CV00495

**PLAINTIFF's
EMERGENCY MOTION FOR**

**EMERGENCY TEMPORARY
RESTRAINING ORDER
EFFECTED NO LATER THAN
SEPTEMBER 28 2021 3:00PM
PURSUANT RULE 65**

**JAMES M. GRIFFITH
IN OFFICIAL CAPACITY OF
MEMBER
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**SHANNON P. COX
IN OFFICIAL CAPACITY OF
CHAIRMAN
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**GREGORY A. DODD
IN OFFICIAL CAPACITY OF
CHAIRMAN
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**GREGORY A. DODD
IN OFFICIAL CAPACITY OF
MEMBER & POLITICAL
INCUMBENT
ALLEGHANY COUNTY
BOARD OF SUPERVISORS**

**PATRICK JENSEN
IN OFFICIAL CAPACITY OF
COMMONWEALTH ATTORNEY
PETITIONER**

**JIM GUINN
IN OFFICIAL CAPACITY OF
SPECIAL COUNSEL FOR
COMMONWEALTH ATTORNEY
PETITIONER**

**HON. JUDGE ED STEIN
IN OFFICIAL CAPACITY OF
PRESIDING JUDGE ALLEGHANY
COUNTY CIRCUIT COURT
CASE CL20-827**

Defendant(s),

PLAINTIFFS EMERGENCY MOTION

FOR EMERGENCY TEMPORARY RESTRAINING ORDER

EFFECTED NO LATER THAN SEPTEMBER 28 2021 3:00PM

PURSUANT RULE 65

COMES NOW the Plaintiff, Donnie T.A.M. Kern via Pro Se requesting a an
Emergency Temporary restraining order to enjoin the Defendant(s) in their official
capacity(s) as chairman and member(s) of the Alleghany County Board of
Supervisors (hereinafter "ACBS"), Patrick Jensen in the official capacity of
Commonwealth Attorney, Jim Guynn in the official capacity of Special Counsel
for the Commonwealth Attorney and counsel for Alleghany County Board of
Supervisors, Honorable Judge Ed Stein in the official capacity as Presiding Judge

for the Alleghany County Circuit Court Case CL20-827, and Mark Herring in his official capacity of Virginia Attorney General all of which are citizens of Virginia.

The emergency motion for temporary restraining order seeks to enjoin the defendants from attempting to remove/suspend the plaintiff from his position on the Alleghany County School Board which is imminent as a motion to suspend the plaintiff is scheduled to be heard by Judge Ed Stein, presiding judge of Alleghany County Circuit court on **September 28 at 3:00PM**

BASIS FOR MOTION

1. The plaintiff on September 27 2021 filed a complaint and pleading in the United States District Court for the Western District of Virginia, Roanoke division against the defendants seeking declaratory and preliminary injunctive relief involving a pending case in the Alleghany County Circuit Court CL20-827
2. The plaintiff argues that absent Emergency Temporary Restraining Order the plaintiff will suffer immense irreparable harm including, but not limited to, the loss of the plaintiffs' constitutional protections which no monetary compensation is available to remedy.
3. Unless the defendants are enjoined from removing/suspending the plaintiff from the Alleghany County school board the plaintiff will be removed from the

Alleghany County school board due to the defendants' actions which were done in bad faith, in an effort to harass, and to cause significance and immense irreparable harm;

4. Whereas the defendant's have charged the plaintiff with violating Virginia Code §24.2-233(1) which is patently unconstitutional, facially void-for-vagueness and facially overbreadth, was charged against the plaintiff in bad faith and with unclean hands and other extraordinary circumstances in an effort to harass and cause immense irreparable harm to the plaintiff which compels the United States District Court's attention in this matter voiding any possibility of federal abstention
5. Whereas the state court is an inadequate forum for resolute and would only intensify the irreparable harm the plaintiff is facing
6. Absent the Emergency Temporary Restraining Order, the status quo will be further breached causing irreparable harm to the plaintiff and the public. If the plaintiff is removed/suspended and later is victorious at trial, the irreparable harm caused can never be repaired or compensated. The Emergency Temporary Restraining order can prevent this from occurring.
7. The defendant's motive to recently suspend the plaintiff emerged due to the plaintiff exercising constitutionally protected rights which the defendants have

flagrantly ignored. The plaintiff has tried to warn the defendants of these issues on multiple occasions.

- a. Letter to members of the Alleghany County Board of Supervisors approximately on October 27 2019;
 - b. Letter to members of the Alleghany County Board of Supervisors approximately on June 1 2021;
 - c. Motion to Continue which was filed on August 10 2021 in the Alleghany County Circuit Court;
 - d. Notice of Removal served on August 25 2021 effected removal with Patrick Jensen and Debra Byer, Alleghany County Clerk of Court.
8. Granting the Emergency Temporary Restraining order will best serve the public interest.
9. Pursuant to Federal Rule of Civil Procedure 65(c), neither the United States nor any officer or agency of the United States is required to post bond as a prerequisite to the issuance of an injunction

PLEASE TO NOTICE this Emergency Motion for an Emergency Temporary Restraining Order is supported by a concurrently filed complaint, and pleading for declaratory and preliminary injunctive relief referenced in the above assigned captioned case

WHEREFORE, the plaintiff prays that the defendants and all persons acting on its behalf be enjoined from removing/suspending the plaintiff from his position on the Alleghany County school board to prevent immense and imminent irreparable harm until the case will be resolved.

DECLARATION

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11 and the foregoing is true and correct on this 27 day of September 2021.



Donnie T.A.M. Kern, Pro Se
Respondent
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Clifton Forge, Virginia 24422
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540-958-4958

CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing will be emailed to the following:

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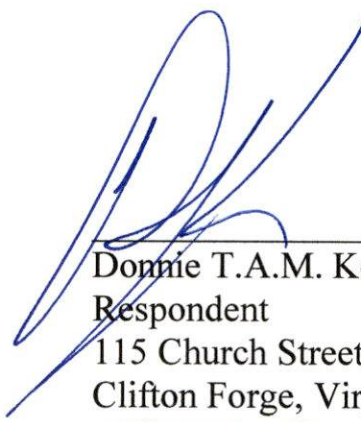
Gregory A. Dodd
Member, Alleghany County Board of Supervisors
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Jim H. Guynn, Jr.
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Honorable Judge Ed Stein
Courthouse
266 West Main Street
Covington, VA 24426
540-965-1738
Email-Via Brenda Lemons: bslemons@vacourts.gov

on this the 27 day of September 2021



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